

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KARLENE K. PETITT,

Plaintiff,

v.

AIR LINE PILOTS ASSOCIATION,

Defendant.

CASE NO. 2:20-cv-1569 RSL

**DEFENDANT AIR LINE PILOTS  
ASSOCIATION'S MOTION TO  
MODIFY SCHEDULING ORDER  
AND CONSOLIDATE CASES**

NOTE ON MOTION CALENDAR:  
January 4, 2021

**INTRODUCTION AND RELIEF SOUGHT**

Defendant Air Line Pilots Association ("ALPA") respectfully moves to modify the Court's Order of December 9, 2020 (Dkt. 7) ("Scheduling Order") and to consolidate the instant, second-filed action with earlier, very similar litigation filed by *pro se* Plaintiff Karlene Petitt against ALPA. As outlined below, ALPA requested Plaintiff's agreement to the relief sought here but Plaintiff disagrees with much of it. The basis for these requests, and the requested modifications, are as follows.

**PROCEDURAL BACKGROUND**

There are two similar cases involving the Parties pending before this Court. Both cases concern Plaintiff's allegations that ALPA breached its duty of fair representation ("DFR") to her, while Plaintiff adds a claim in the instant case (the "DFR/Title VII Case") that ALPA violated Title VII of the Civil Rights Act of 1964.

1           1.     The DFR case

2           Plaintiff filed her Complaint in the DFR Case on July 13, 2020, and filed an Amended  
3 Complaint on August 10, 2020. It asserts that ALPA breached its DFR to her based on similar  
4 allegations as those in the subsequently-filed DFR/Title VII Case. ALPA moved to dismiss the  
5 DFR Case and briefing on that motion was completed on December 9, 2020.

6           On September 25, 2020, the Court granted the Parties' joint motion in the DFR Case to  
7 vacate all deadlines for the Rule 26(f) conferences and reports and the Rule 26(a)(1) initial  
8 disclosures (Dkt. 13 in Case No. 2:120-cv-01093-RSL). That Order directed the Parties to confer  
9 concerning the schedule for the DFR Case within 14 days of the issuance of the Court's ruling on  
10 ALPA's Motion to Dismiss and to file a proposed revised scheduling motion/report to the Court  
11 within seven days thereafter.

12           2.     The Instant DFR/Title VII case

13           Plaintiff filed the instant case on October 23, 2020, and it was transferred to Judge Lasnik  
14 on December 3, 2020 (Dkt. 6). The Complaint and process have not yet been served in the  
15 instant case. Counsel for ALPA entered a Notice of Appearance on December 2, 2020, which  
16 expressly preserved all objections as to improper service and jurisdiction. *See Lewellen v.*  
17 *Morley*, 909 F.2d 1073, 1077 (7th Cir. 1990) ("filing of 'appearance form' does not relieve  
18 plaintiff from executing proper service of process upon defendants"); *Hudson v. Christian*, 1994  
19 WL 315471, at \*1 (D.C. Cir. 1994) ("Appellant's assertion that counsel's entry of appearance in  
20 this court constitutes service on appellee is without merit."); *Kiro v. Moore*, 229 F.R.D. 228,  
21 230-31 (D.N.M. 2005) (similar). *See also Benny v. Pipes*, 799 F.2d 489, 492-93 (9th Cir. 1986)  
22 (defendants' motions to extend time to file answer to suit did not constitute general appearance  
23 or waive requirement for valid service of process).

24           Plaintiff has requested that ALPA waive service of the Complaint in the instant case and  
25 made the latest such request on December 16, 2020. ALPA has not agreed to waive service  
26 because it believes that this case should be consolidated with Case No. 2:20-cv-1093-RSL,  
27

discussed below (the “DFR Case”), which would obviate the need for service and forestall the automatic, subsequently-triggered deadlines.

On December 9, 2020, the Court issued the Scheduling Order in the instant case setting forth the following deadlines: Rule 26(f) Conference by December 23, 2020; Initial Disclosures pursuant to Rule 26(a)(1) on December 30, 2020; and Combined Joint Status Report and Discovery Plan Required by Rules 26(f) and Local Rule 26(f) by January 6, 2021.

### ARGUMENT

In light of the foregoing, ALPA respectfully submits that proceeding here in a similar manner as in the DFR Case -- postponing the foregoing conference, report, and initial disclosures -- will most efficiently advance this litigation while minimizing costs and burdens on the Parties. *See* Introduction to Civil Rules of United States District Court for the Western District of Washington, at 1 (directing parties to consider “limiting discovery and phasing discovery and motions to bring on for early resolution potentially dispositive issues”). On December 16, 2020, Plaintiff expressed her agreement to “extend the scheduling order regarding the Title VII case until the motion to dismiss the DFR is resolved.” In any event, given the absence of service of process on ALPA in the instant case, there is no basis to proceed with the scheduled disclosures and conferences.

ALPA also respectfully requests that the Court consolidate the DFR Case and the instant case, with Plaintiff filing a new, amended complaint in the consolidated case that covers all of her claims. The factual allegations in the lengthy (50+ pages) complaints in the two cases are materially identical, with Plaintiff seeking to interject new claims in her opposition to ALPA’s motion to dismiss the DFR Case. *See* Dkt. 22 in Case No. 2:20-cv-01093-RSL (ALPA’s Reply Brief in the DFR Case), at 3-4, 7, 8, 9, 12. Consolidating the two cases (along with the filing of a consolidated, amended complaint by Plaintiff) will allow the Court to resolve all of Plaintiff’s claims in a single proceeding. In contrast, and as matters presently stand, the Court would be addressing the fully-briefed motion to dismiss in the DFR Case and then (if that motion is granted), a similar motion in the Title VII case, followed by a potentially amended complaint (in

one or both of these cases or in a consolidated case) that adds the apparent claims made in Plaintiff's opposition to ALPA's motion to dismiss the DFR Case.

Plaintiff previously expressed agreement to consolidate the cases, writing in her November 20 opposition to ALPA's motion to dismiss her Amended Complaint in the DFR Case: "Plaintiff requests the leave of this court to incorporate the gender-specific allegation contained in her Title VII action into this DFR litigation, and/or that the Court consolidate the Title VII action with the instant lawsuit." Dkt. 19 in Case No. 2:120-cv-01093-RSL, at 15. However, Plaintiff since has taken a different position, most recently writing to ALPA counsel on December 16: "***I do not agree to your motion to combine the cases.***" (emphasis in original)

In sum, ALPA respectfully requests that the Court order as follows: (a) ALPA need not file any response to the Complaint in the instant case except as set forth pursuant to the order resulting from the Parties' conference set forth in paragraph (d) below; (b) all deadlines for the Rule 26(f) conferences and reports and Rule 26(a)(1) initial disclosures be vacated in the instant case; (c) the consolidation of the instant case with the DFR Case and that Plaintiff file an amended complaint in the consolidated case on or before February 1, 2021; and (d) the Parties to confer with respect to a Scheduling Order within 14 days of the filing of the amended complaint in the consolidated action and to file a proposed schedule with the Court within seven days thereafter.

All of the foregoing new proposed deadlines and orders are set forth in the accompanying draft order.

RESPECTFULLY SUBMITTED this 16th day of December 2020.

s/Dmitri Iglitzin

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